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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1970

NO. 964

JACK VAN SICKLE,
Petitioner,

v.

THE STATE OF NEVADA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE
SUPREME COURT OF THE STATE OF NEVADA

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INDEX

	Page
OPINION BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL AND STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	4
ARGUMENT	9
CONCLUSION	16
APPENDIX A (Majority and Dissenting Opinions of Nevada Supreme Court)	17
APPENDIX B (Order of Nevada Supreme Court Denying Rehearing)	28
APPENDIX C (Collateral Statutory Provisions)	29

CITATION OF AUTHORITIES

United States Constitution — Page

Article IV, §2, ¶2 2
Amendment IV 3
Amendment VIII 3
Amendment XIV, §1 3

Constitution of the State of Nevada

Article 1, §7 3

Nevada Revised Statutes

§34.360 3
§34.530 4
§179.177-§179.235 ..... 6, 9
§179.197 4
§179.209 30
§199.140 29
§199.480 30

California Penal Code

§182.1 6
§187 6
§190 6

Annotations

9 Uniform Laws Annotated, 1967
Cumulative Pocket Part, p. 143 9

Cases

Allen v Wild (Iowa, 1957)
86 N.W.2d 839 11
Application of Haney (Idaho, 1955)
289 P. 2d 945 11

CITATION OF AUTHORITIES (Continued)

Cases — Page

Application of Middlebrooks (D.C., Cal., 1950) 88 F. Supp. 943, rev'd on other grounds, 188 F.2d 308, cert. den., 342 U.S. 862, 72 S.Ct. 90, 96 L.Ed 649 15

Beck v State of Ohio (1964) 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed2d 142 10

Buchanan v State ex rel. Weiss (Fla.App., 1964) 166 So.2d 596 11

Cooper v Aaron (1958) 358 U.S. 18, 78 S.Ct. 1401, 32 L.Ed.2d 5 11

Ex Parte Anderson (Tex.Crim.App., 1938) 113 S.W.2d 551 11

Ex Parte Wheeler (1965) 81 Nev. 495, 406 P.2d 713 ..... 14, 15

Gondine v Griffin (D.C., Ga., 1970) 309 F.Supp. 590 ..... 10, n.10

Hernandez v Heyd (D.C., La., 1970) 307 F. Supp. 826 ..... 10, n.10

Johnson v Matthews (U.S.App.D.C., 1950) 182 F.2d 677, cert. den., 340 U.S. 828, 71 S.Ct. 65, 95 L.Ed. 608 14

Ker v State of California (1963) 374 U.S. 23, 83 S.Ct. 1623, 10 L.Ed.2d 726 10

Kirkland v Preston (C.A., D.C., 1967) 385 F.2d 670 ..... 10, 12

Mapp v State of Ohio (1961) 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 10

Marshall v District Court (1963) 79 Nev. 280, 382 P.2d 214 15

Mastrian v Hedman (CA 8th, 1964) 326 F.2d 708, cert. den., 376 U.S. 965, 84 S.Ct. 1128, 11 L.Ed.2d 982 ..... 10, n.10

CITATION OF AUTHORITIES (Continued)

Cases *Page*

North Carolina v Pearce (1969) 395 U.S. 711, 89 S. Ct. 2072, 23 L.Ed.2d 656 16

People ex rel. Meeker v Baker (N.Y., 1910) 139 App.Div. 471, 124 N.Y.S. 47 11

Ruther v Sweeney (Ohio, 1956) 137 N.E.2d 292 11

Shapiro v Thompson (1969) 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed2d 600 16

Sheriff, Clark County v Thompson (Nev., 1969) 452 P.2d 911 13

Stack v Boyle (1951) 342 U.S. 1, 72 S.Ct. 1, 20 L.Ed.2d 917 14

State ex rel Stringer v Quigg (Fla., 1926) 107 So.409 11

U.S. ex rel. Fink v Heyd (D.C., La., 1968) 287 F.Supp. 716, aff'd, (CA5th, 1969) 408 F.2d 7 ..... 10, n.10

U.S. ex rel. Shakur v Com'r of Corrections (D.C., N.Y., 1969) 303 F. Supp. 303 ..... 10, n.10

U.S. ex rel. Smith v Prasse (D.C., Pa., 1967) 277 F.Supp. 391 ..... 10, n.10

United States v Jackson (1968) 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 16

Waller v Jordan (Ariz., 1941) 118 P.2d 450 11

Williams v Oklahoma City (1969) 395 U.S. 458, 89 S.Ct. 1818, 23 L.Ed.2d 440 16

Winnick v Reilly (Conn., 1924) 132 Atl. 440 11

Wolf v People of State of Colorado (1949) 338 U.S. 25, 69 S.Ct., 1359, 93 L.Ed. 1782 .... 10, 12

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THE STATE OF NEVADA,
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

The petitioner, JACK VAN SICKLE, prays that a writ of certiorari issue to review the final order and opinion of the Supreme Court of the State of Nevada rendered in these proceedings.

OPINION BELOW

The final order and the majority and dissenting opinions of the Supreme Court of the State of Nevada are reported at 471 P.2d 224 (No. 6205, July 1, 1970) and attached hereto as Appendix A, p. 17. An order of the Supreme Court of the State of Nevada denying petitioner's motion for rehearing was entered on August 18, 1970, and is attached hereto as Appendix B, p. 28.

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. §1257(3), and Rule 19, ¶1(a), of the Rules of the Supreme Court of the United States

The certified record and this petition have been timely filed and docketed under the provisions of 28 U.S.C. §2101 and Rules 21 and 22 of the Rules of the Supreme Court of the United States.

QUESTIONS PRESENTED

1. Was petitioner denied equal protection of the laws by a Nevada Supreme Court decision that his status as an arrestee under an executive warrant of extradition to answer a criminal charge in California precluded him from invoking Nevada's constitutional and statutory provisions authorizing admission to bail pending a habeas corpus proceeding asserting lack of probable cause for issuance of the warrant?

2. Was petitioner unreasonably denied the right to bail in violation of the Eighth Amendment to the United States Constitution?

3. Was petitioner's assertion in habeas corpus proceedings of his constitutional right to a determination whether his arrest was supported by probable cause unreasonably impeded and chilled by the Nevada Supreme Court's decision that petitioner has no standing to apply for and be admitted to bail but must be held in jail while asserting such constitutional right?

CONSTITUTIONAL AND STATUTORY PROVISIONS*

United States Constitution, Article IV, §2, ¶2:

> "A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found

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* Other statutory provisions having some relation to this case but which are not central to the constitutional questions raised appear in Appendix C, p. 29.

in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

United States Constitution, Amendment IV:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

United States Constitution, Amendment VIII:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

United States Constitution, Amendment XIV, §1:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Nevada Constitution, Article 1, §7:

"All persons shall be bailable by sufficient sureties, unless for Capital Offenses when the proof is evident, or the presumption great."

Nevada Revised Statutes, §34.360:

"Every person unlawfully committed, detained, confined or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint."

Nevada Revised Statutes, §34.530:

> "Whenever any person may be imprisoned or detained in custody on any criminal charge, for want of bail, such person shall be entitled to a writ of habeas corpus for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined."

Nevada Revised Statutes, §179.197:

> "1. No person arrested upon such warrant [governor's warrant of arrest in extradition] shall be delivered over to the agent whom the executive authority demanding him has appointed to receive him unless he is first taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel.
>
> "2. If the prisoner or his counsel state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus.
>
> "3. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody and to the agent of the demanding state."

STATEMENT OF THE CASE

Petitioner, a long-time resident of Nevada, is the subject of extradition proceedings brought by California on a criminal complaint charging him with conspiracy to commit murder.

Petitioner seeks review by certiorari of the majority opinion and order of the Nevada Supreme Court vacating a lower court order admitting him to bail pending his habeas corpus proceeding asserting lack of probable cause to support the executive warrant of arrest issued against petitioner by the Governor of Nevada.

The following proceedings were had in the lower courts:

Petitioner brought a habeas corpus proceeding in the Second Judicial District Court of the State of Nevada asserting that the warrant of extradition issued against him by the Governor of Nevada was not supported by probable cause and violated petitioner's rights under the Fourth Amendment to the United States Constitution. (R. doc. #17, penciled page Nos. 1-36.)

Petitioner applied for bail during the pendency of this proceedings (R. doc. #17, penciled page Nos. 37-39), invoking the provisions of Article 1, §7, of the Constitution of Nevada that: "All persons shall be bailable by sufficient sureties, unless for Capital Offenses when the proof is evident, or the presumption great", and the statutes of Nevada on habeas corpus and bail under which every person unlawfully commited, detained, confined or restrained of his liberty, under any pretense whatever, has the right to prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint,[1] a provision making the writ of habeas corpus available for the purpose of giving bail to any person imprisoned or detained in custody on any criminal charge,[2] and a provision in Nevada's Uniform Criminal Extradition Act specifying that no person arrested on a governor's warrant in extradition shall be delivered to the agent of the demanding state until he has been taken before a judge of a court of record, informed of the demand made for his surrender and the crime charged against him, informed of his right to legal counsel, and accorded the right to test the legality of his arrest in habeas corpus.[3]

On March 26, 1970, the district court in which the habeas corpus proceeding was pending admitted petitioner to bail (R.

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1. *Nevada Revised Statutes*, §34.360, Constitutional and Statutory Provisions, p. 3.

2. *Nevada Revised Statutes*, §34.530, Constitutional and Statutory Provisions, p. 4.

3. *Nevada Revised Statutes*, §179.197, Constitutional and Statutory Provisions, p. 4.

doc. #44). Five days later, on March 31, 1970, the Attorney General of Nevada filed a petition in certiorari in the Nevada Supreme Court for review of the order admitting petitioner to bail, alleging, generally, that the order was contrary to Nevada law and exceeded the district court's jurisdiction (R. doc. #1).

There is no statute in Nevada which prohibits the granting of bail to persons held under executive warrants of extradition. To support his petition for certiorari, the Attorney General relied on (1) the circumstance that Nevada's Uniform Criminal Extradition Act[4] is silent on the subject of bail after a governor's warrant is issued; (2) the further circumstance that bail is accorded under the Uniform Criminal Extradition Act to persons held under fugitive warrants unless the prisoner is charged with an offense shown to be punishable by death or life imprisonment in demanding state;[5] and the extradition clause of the United States Constitution.[6]

Petitioner, as the real party in interest, filed a response to the Attorney General's petition for certiorari setting forth, inter alia, that the order admitting petitioner to bail was an entirely proper exercise of the district court's jurisdiction, duties and discretion under Nevada's constitutional and statutory provisions for bail and habeas corpus (R. doc. #4).

Petitioner also filed a motion to dismiss the Attorney General's petition on the ground, among others, that review of an order admitting an arrestee to bail would violate the Due Process and Equal Protection Clauses of the Fourteenth Amend-

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4. *Nevada Revised Statutes*, §§179.177 to 179.235.

5. *Nevada Revised Statutes*, §179.209, Appendix C, p. 30. In California a conspiracy to commit a felony is punishable in the same manner and to the same extent as the felony itself and first degree murder, at the discretion of the trier of the facts, may be punished by death. (*California Penal Code*, §§182.1, 187 and 190, Appendix C, p. 29.) In Nevada, a conspiracy to commit a crime is a gross misdemeanor punishable by imprisonment in the county jail for not more than one year, or a fine of not more than $1,000.00, or both. (*Nevada Revised Statutes*, §§199.140 and 199.480, Appendix C, pp. 29, 30.)

6. *Article IV*, §2, ¶2, Constitutional and Statutory Provisions, p. 2.

ment of the United States Constitution (R. doc. #6). This constitutional issue was briefed and discussed under Point Three of the Argument and Authorities Supporting Motion to Dismiss (R. doc. #6, pp. 12-18), and also under Point IV of the Reply to Memorandum Opposing Motion to Dismiss (R. doc. #18, pp. 8-16).

The Attorney General's Reply and Supplemental Points and Authorities place great reliance on the extradition clause of the Federal constitution as prohibiting the application of Nevada's law of bail to any person held under an executive warrant of extradition (R. doc. #9). In the Reply to Petitioner's Memorandum Opposing Motion to Dismiss, the issue of the impact of the extradition clause of the United States Constitution is briefed and argued on behalf of Mr. Van Sickle (R. doc. #18, pp. 2-4), and his rights under the Fourth Amendment and the Due Process and Equal Protection clauses of the Fourteenth Amentment to the Constitution of the United States are further briefed and argued therein under the point: A person arrested pursuant to an executive warrant of extradition has a right to be admitted to bail under the laws of the asylum state the same as any other person held on a criminal charge; any infringement of that right violates the Fourth Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution (R. doc. #18, pp. 8-16).

The Nevada Supreme Court granted certiorari and the majority opinion of three of the justices held petitioner's status as an arrestee under an executive warrant of extradition precluded him from invoking Nevada's constitutional and statutory provisions on bail. The order admitting petitioner to bail was held to exceed the jurisdiction of the district court and was vacated (Appendix A, pp. 29).

The majority opinion relies on (1) the circumstance that the Uniform Criminal Extradition Act makes no provision for bail after the governor has issued his warrant; (2) a "presumption" that bail should be precluded after the issuance of

the governor's warrant arising from the circumstance that under the Act a fugitive who has been charged with a capital crime in the demanding state may not be admitted to bail prior to the issuance of the governor's warrant; (3) other state court decisions holding that the language of their particular constitutional provisions extends the right of bail only to those persons who are charged with a crime under the substantive laws of such states; and (4) a doctrine of paramount authority applied to the extradition clause of the United States Constitution and congressional power thereunder.

A dissenting opinion filed by the two remaining justices of the Nevada Supreme Court expressed the views that (1) no legislative grant of power is essential before a court in Nevada may grant bail in an extradition matter; (2) that Nevada's constitutional provision on bail is not confined to persons in custody for crimes committed in Nevada and does not exclude persons in custody by reason of an extradition proceeding or preclude bail to one charged with a capital offense where the proof is not evident nor the presumption great; (3) that the court's power to grant bail stems from Nevada's constitutional provisions and may not be diminished by legislative action or an interpretation of legislative silence; and (4) that nothing contained in the United States Constitution, Article IV, §2, concerning interstate extradition, touched the problem before the court. The dissent also points out that Nevada's Uniform Criminal Extradition Act contemplates habeas to test the legality of arrest under executive warrant,[7] that habeas is expressly made available for the purpose of giving bail to one in custody on "any" criminal charge,[8] and that the meaning of these provisions is denied by a holding that the court has no power to grant bail after an executive warrant has issued — a holding which also "places a penalty upon the fugitive's right

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7. *Nevada Revised Statutes*, §179.197, Constitutional and Statutory Provisions, p. 4.

8. *Nevada Revised Statutes*, §34.530, Constitutional and Statutory Provisions, p. 4.

to challenge the legality of his arrest and might effectively force a waiver of that right since the price of exercising it — jail, until his challenge is resolved by the court — may be too great". The dissenting justices concluded that in passing on an application for bail where a capital offense is charged, the determination of whether the proof is evident is discretionary and not reviewable by certiorari, a writ concerning only jurisdiction, that the proceeding should have been dismissed. (Appendix A, pp. 24).

Mr. Van Sickle's Petition for Rehearing charged that the majority opinion of the Nevada Supreme Court is contrary to the Constitution and laws of Nevada and denies equal protection of the laws to Mr. Van Sickle (R. doc. #24).

The Petition for Rehearing was denied by the Nevada Supreme Court (Appendix B, p. 28).

ARGUMENT

A FEDERAL QUESTION OF SUBSTANCE NOT HERETOFORE DETERMINED BY THE UNITED STATES SUPREME COURT HAS BEEN DECIDED BY THE STATE COURT CONTRARY TO PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES AND NOT IN ACCORD WITH APPLICABLE DECISIONS OF THE UNITED STATES SUPREME COURT.

The central issue raised by this petition is whether the State of Nevada denied the equal protection of its laws to petitioner by holding he had no standing to claim the benefit of its constitutional and statutory provisions for admission to bail while asserting his Fourth Amendment and statutory right to test the existence of probable cause to support the issuance against him of a governor's warrant of extradition.

This question has never heretofore been decided by the United States Supreme Court.

This is an important federal question of substance which involves the Equal Protection Clause, the Extradition Clause, Nevada's Uniform Criminal Extradition Act,[9] and the prin-

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9. *Nevada Revised Statutes*, §§179.177-179.235, enacted in 1967. The *Uniform Criminal Extradition Act* has been adopted in nearly all of the States and territories. See 9 *Uniform Laws Annotated*, 1967 Cumulative Annual Pocket Part, p. 143.

ciples of presumption of innocence and right to bail implicit in the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment.

There are two broad reasons why this question has not heretofore been raised and determined by the United States Supreme Court. In the first place, federal concern in this general area arose out of the relatively recent decisions in *Wolf v. People of State of Colorado* (1949) 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782, under which Fourth Amendment requirements were made applicable to the States through the Fourteenth Amendment, and *Mapp v State of Ohio* (1961) 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081, which made Fourth Amendment requirements enforceable against the States by the same sanctions and by application of the same constitutional standards which prohibit unreasonable searches and seizures by the federal government. The impact of these decisions on the States with reference to arrests in extradition proceedings is the subject of *Kirkland v Preston* (C.A., Dist. Col., 1967) 385 F.2d 670, where it is also pointed out that only the decisions since *Wolf* and *Mapp*, (as, for example, *Beck v State of Ohio* (1964) 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed2d 142 and *Ker v State of California* (1963) 374 U.S. 23, 83 S.Ct. 1623, 10 L.Ed.2d 726) have made it clear that *Wolf* and *Mapp* applied the whole of the Fourth Amendment to the States. Moreover, it is only recently that the dimensions and impact upon the States of the Eighth Amendment have begun to be developed; so far, these Eighth Amendment developments are adjudicated only in decisions of the United States Circuit Courts of Appeal and United States District Courts.[10]

The second reason for the novelty of the issue raised herein

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10. See, for example: *U.S. ex rel. Fink v Heyd* (D.C., La., 1968) 287 F.Supp. 716, aff'd: (CA 5th, 1969) 408 F.2d 7; *Mastrian v Hedman* (CA 8th, 1964) 326 F.2d 708, *cert. den.* 376 U.S. 965, 84 S.Ct. 1128, 11 L.Ed.2d 982; *Goodine v Griffin* (D.C., Ga., 1970) 309 F.Supp. 590; *Hernandez v Heyd* (D.C., La., 1970) 307 F.Supp. 826; *U.S. ex rel. Shakur v Com'r of Corrections* (D.C. N.Y., 1969) 303 FSupp. 303; *U.S. ex rel. Smith v Prasse* (D.C., Pa., 1967) 277 F.Supp. 391.

arises out of the fact that although many States have passed on the question whether a right of bail exists pending extradition, those states having an unlimited or unclassified constitutional and statutory right of bail have allowed persons under executive warrants of extradition to be admitted to bail, so that no Equal Protection question arose. See, for example:

Winnick v Reilly (Conn., 1924) 132 Atl. 440

Application of Haney (Idaho, 1955) 289 P.2d 945

People ex rel. Meeker v Baker (N.Y., 1910) 139 App. Div. 471, 124 N.Y.S. 47

Ruther v Sweeney (Ohio, 1956) 137 N.E.2d 292

Ex parte Anderson (Tex.Crim.App., 1938) 113 S.W.2d 551

In other states, the constitutional or statutory provisions on the right of bail are either expressly applicable or have been construed to be applicable only to persons charged with substantive crimes against that state and bail has not been extended to persons held under executive warrants of extradition. See, for example:

Waller v Jordan (Ariz., 1941) 118 P.2d 450

Buchanan v State ex rel. Weiss (FlaApp., 1964) 166 So.2d 596

State ex rel. Stringer v Quigg (Fla., 1926) 107 So. 409

Allen v Wild (Iowa, 1957) 86 N.W.2d 839

These cases appear to pose an Equal Protection Clause issue, since any form of unreasonable and arbitrary discrimination by a State — executive, legislative or judicial — is equally offensive to the Equal Protection Clause (*Cooper v Aaron* (1958) 358 U.S. 18, 78 S.Ct. 1401, 32 L.Ed.2nd 5); but, apparently, the issue went unrecognized or, if the issue were raised, it was not pursued beyond the level of the State court decision.

The chilling and impeding effect which the denial of bail has on a person asserting his constitutional right to test the

existence of probable cause for his arrest in extradition proceedings is demonstrated by the very fact that the Equal Protection Clause issue posed in the cases from Arizona, Florida and Iowa has lain dormant for so long. As is pointed out by the justices who dissented from the Nevada Supreme Court's decision on petitioner's case, a refusal to accord this right of bail "places a penalty upon the fugitive's right to challenge the legality of his arrest and might effectively force a waiver of that right since the price of exercising it — jail, until his challenge is resolved by the court — may be too great."[11]

The substantiality of the federal questions raised herein reside not alone in the constitutional protections invoked by the petitioner, nor in the impact which the resolution of the issues will have in the field of interstate extradition; substantiality also arises from the situational plight of persons arrested under warrants of extradition. Thus, the decision in *Kirkland v Preston,* supra, 385 F.2d, pp.676, 677, that Fourth Amendment considerations require rendition in extradition to be deferred until the executive and judicial authorities of the asylum state are satisfied the demand for extradition is based on probable cause, is amplified by the following discussion of that situational plight:

> "The law appreciates the hardships which extradition can involve: not only the suspension of one's liberty, but his deportation from the state in which he lives into another jurisdiction which may be hundreds of miles from his home. The law accordingly surrounds the accused with considerable procedural protection to stave off wrongful rendition. It is consistent with this concern for the accused's just treatment to recognize his right to require official confirmation of probable cause in the asylum state before extradition. This right to probable cause confirmation seems especially appropriate in view of the fact that the accused will have no access to an evidentiary prelim-

11. Appendix A, p. 27.

minary hearing on probable cause until he finally arrives in the accusing jurisdiction.

"In addition, the interests of the asylum state are advanced by its own probable cause determination. For it would be highhanded to compel that jurisdiction to lend its coercive authority, and the processes of its law, against even its own citizens in aid of an enterprise the key details of which remain in the dark. If, as here, it turns out that the prosecution against the fugitive is unfounded, the asylum state will have expended its resources and given the legitimizing stamp of its judiciary to a cause which is at best futile, as worst arbitrary.

"Recognizing a probable cause requirement . . . conflicts with no compelling interests elsewhere in the legal system. If the demanding state does have probable cause data, it will be no real inconvenience to record this evidence in the extradition papers. Documenting probable cause in an affidavit is what the policeman . . . must do if he is to secure an ordinary warrant for an arrest or search. And governors, or habeas corpus judges, will hardly be significantly burdened by having to study written submissions for probable cause in extradition cases."

Petioner's Fourth Amendment right to test the existence of probable cause in habeas corpus is codified by Nevada's Uniform Criminal Extradition Act,[12] and recognized by the Nevada Supreme Court. *Sheriff, Clark County v Thompson* (Nev., 1969) 452 P.2d 911.

The full, equal and unimpeded assertion of this constitutional right includes the right to release on bail under Article I, §7 of the Constitution of Nevada providing: "All persons shall be bailable by sufficient sureties, unless for Capital Offenses when the proof is evident, or the presumption great." By this provision persons charged with a capital offense are entitled to

12. *Nevada Revised Statutes*, §179.197, Constitutional and Statutory Provisions, p. 4.

be admitted to bail where the proof is not evident nor the presumption great. *Ex parte Wheeler* (1965) 81 Nev. 495, 406 P.2d 713.

Nevada statutes enacted to accommodate the constitutional provision for bail provide that every person restrained of his liberty under "any pretense whatever" may petition for habeas;[13] habeas is expressly made available for the purpose of giving bail to one in custody on "any" criminal charge.[14] Nothing in any of these provisions excludes persons in custody by reason of extradition proceedings.

The right of admission to bail before conviction is vital to the assertion of petitioner's constitutional rights and is preserved and protected under the Eighth Amendment. This court stated in *Stack v Boyle* (1951) 342 U.S. 1, 72 S.Ct. 1, 20 L.Ed.2d 917:

> ". . . This traditional right to freedom before conviction permits unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. See Hudson v. Parker, 1895, 156 U.S. 277, 285, 15 S.Ct. 450, 453, 39 L.Ed 424. Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."

The Extradition Clause, Article IV, §2, ¶2, United States Constitution, has no inhibitory effect on the Bill of Rights or the Fourteenth Amendment. This Court has apparently never made any pronouncement thereon, but a contention of inter-constitutional conflict was dealt with in the case of *Johnson v Matthews* (1950) U.S.App.D.C. 376, 182 F.2d 677, cert. den., 340 U.S. 828, 71 S.Ct. 65, 95 L.Ed. 608, as follows:

> "It is said that this case presents a conflict between provisions of the Constitution. It presents no such con-

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13. *Nevada Revised Statutes*, §34.360, Constitutional and Statutory Provisions, p. 3.

14. *Nevada Revised Statutes*, §34.330, Constitutional and Statutory Provisions, p. 4.

flict. The extradition clause is a procedural provision. It does not impinge upon any substantive right of any individual and does not affect any provision of the Constitution or its Amendments protecting such rights . . .

". . . . A fugitive has neither more nor less constitutional rights than has an incarcerated prisoner."

To the same effect, see *Application of Middlebrooks* (D.C., Cal., 1950) 88 F.Supp. 943, rev'd on other grounds, 188 F.2d 308, cert. den., 342 U.S. 862, 72 S.Ct. 90, 96 L.Ed. 649.

An evidentiary hearing was held before the trial court which, by its ruling admitting petitioner to bail, determined that although he was charged with an offense which could constitute a capital offense in the State of California, the proof thereof was not evident nor the presumption great. This determination was a matter resting in the jurisdiction and judicial discretion of the trial court and not subject to appeal, *Ex parte Wheeler*, supra, nor reviewable by certiorari which in Nevada is restricted to jurisdictional defects, *Marshall v District Court* (1963) 79 Nev. 280, 382 P.2d 214.

Nevertheless, despite the clarity of petitioner's right to bail before conviction under the Eighth Amendment and under the constitution and statutes of Nevada, and despite the command of the Fourteenth Amendment entitling petitioner to equal protection of the laws of Nevada, the Nevada Supreme Court, in certiorari proceedings, arbitrarily and discriminatorily ruled that petitioner's status precluded him from being admitted to bail and wrongfully vacated a valid order of the trial court admitting him to bail.

The action of the Supreme Court of Nevada unreasonably and arbitrarily penalized petitioner in the assertion of his Fourth Amendment rights on the issue of probable cause by allowing such assertion to be made only at the cost of petitioner's imprisonment without bail, in contravention of the doctrine that if a law or judicial determination has no other purpose than to chill the assertion of constitutional rights by penalizing those

who choose to exercise them, then it is patently unconstitutional. *United States v Jackson* (1968) 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138; *Shapiro v Thompson* (1969) 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600; *Williams v Oklahoma City* (1969) 395 U.S. 458, 89 S.Ct. 1818, 23 L.Ed.2d 440; and *North Carolina v Pearce* (1969) 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted and petitioner should be restored to his rights under the Constitution of the United States and the laws of the State of Nevada.

Respectfully submitted:

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APPENDIX A

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 6205

THE STATE OF NEVADA,
Petitioner,

vs.

SECOND JUDICIAL DISTRICT COURT, STATE OF NEVADA, COUNTY OF WASHOE,
Respondent.

July 1, 1970

Original proceeding in certiorari.

The order of the district judge is vacated.

Thompson and Zenoff, JJ., dissented.

Harvey Dickerson, Attorney General; *Daniel R. Walsh*, Chief Deputy Attorney General; and *Michael Melner*, Deputy Attorney General, of Carson City, for Petitioner.

Peter Echeverria and *Eli Grubic*, of Reno, and *Harry E. Claiborne* and *Annette R. Quintana*, of Las Vegas, for Respondent.

OPINION

By the Court, MOWBRAY, J.:

We have been asked in this certiorari proceeding to review the order of the district judge granting bail to Jack Van Sickle, who is a fugitive from justice from the State of California, where

he has been charged with conspiracy to murder six persons, a capital offense under sections 182.1, 187, and 190 of the California Penal Code.[1] He was charged by criminal complaint on December 2, 1969, in the Municipal Court, Modesto Judicial District, County of Stanislaus, State of California, and a warrant for his arrest was issued on that date.

Van Sickle was apprehended in Nevada as a fugitive and was committed to jail to enable his arrest "under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense," as provided in NRS 179.207 of the Uniform Criminal Extradition Act.[2] Since the

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1. West's Ann. Cal. Penal Code § 182:

"If two or more persons conspire:

"1. To commit any crime.

". . .

"They are punishable as follows:

"When they conspire to commit any crime against the person of any official specified in subdivision 6, they are guilty of a felony and are punishable by imprisonment in the state prison for not less than 10 years.

"When they conspire to commit any other felony, they shall be punishable in the same manner and to the same extent as is provided for the punishment of the said felony . . ."

West's Ann. Cal. Penal Code § 187:

"Murder is the unlawful killing of a human being, with malice aforethought."

West's Ann. Cal. Penal Code § 190:

"Every person guilty of murder in the first degree shall suffer death, or confinement in the state prison for life, at the discretion of the court or jury trying the same, and the matter of punishment shall be determined as provided in Section 190.1, and every person guilty of murder in the second degree is punishable by imprisonment in the state prison from five years to life."

2. NRS 179.207:

"If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under NRS 179.189, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such time, not exceeding 30 days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused gives bail as provided in NRS 179.209, or until he is legally discharged."

crime with which Van Sickle was charged was punishable by death or life imprisonment under the laws of the demanding state, California, he was denied bail pending the issuance of the governor's warrant. NRS 179.209.[3] On February 16, 1970, the Governor of Nevada issued an executive warrant commanding the Nevada authorities to deliver Van Sickle to a designated California agent, so that he could be conveyed to California to stand trial in that state.

The Uniform Criminal Extradition Act provides, however, that before such a transfer of custody may be effected the defendant named in the extradition warrant must be taken before a judge of a court of record, who shall inform him of his rights and, in particular, advise the defendant that he may test the legality of his arrest by habeas, and that if he so desires he shall be allowed a reasonable time within which to do so before he is delivered to the agent from the demanding state. NRS 179.197.[4]

3. NRS 179.209:

"Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state."

4. NRS 179.197:

"1. No person arrested upon such warrant [governor's warrant of arrest] shall be delivered over to the agent whom the executive authority demanding him has appointed to receive him unless he is first taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel.

"2. If the prisoner or his counsel state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus.

"3. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state."

5. Indeed, Van Sickle petitioned the district judge for bail after he was apprehended as a fugitive and prior to the issuance of the governor's warrant. His request for bail was denied. NRS 179.209, supra.

Van Sickle indicated his desire to file a habeas petition as so provided, and he did so on March 16, 1970. In addition, he filed a "Petition for Admission to Bail' on the same day. The district judge granted the latter petition and fixed bail in the sum of $10,000, from which order the State seeks review, claiming that the district judge exceeded his jurisdiction in entering the order. We agree.

NRS 179.209 of the Uniform Criminal Extradition Act, supra, provides that a fugitive may be admitted to bail in all cases, unless the offense charge is punishable by death or life imprisonment, pending the issuance of the governor's warrant for the fugitive's arrest. The statute makes no provision for bail after the governor has issued his warrant.[5] Van Sickle argues, however, that the statutory mandate denying bail in extradition proceedings in capital cases extends only until the issuance of the governor's warrant; and that therefore, regardless of the offense charged, a fugitive may be admitted to bail. We do not agree. Although NRS 179.209 of the Uniform Criminal Extradition Act sets forth the conditions when a fugitive may be admitted to bail during extradition proceedings, it covers only the period from the fugitive's arrest to the issuance of the governor's warrant, and not the period thereafter. We do not interpret such silence as an indication by the Legislature that all fugitives may, after the issuance of the governor's warrant, be admitted to bail. If a fugitive under the Act who has been charged with a capital crime in the demanding state may not be admitted to bail prior to the issuance of the governor's warrant, the presumption is much stronger that bail should be precluded after the issuance of the governor's warrant. Other jurisdictions have so held. In Allen v. Wild, 86 N.W.2d 839, 841-842 (Iowa 1957), a case where the fugitive was arrested on an executive warrant and admitted to bail, as in this case, the court said:

"The right of interstate extradition is founded in Section 2 Article IV, of the Constitution of the United States, which provides: 'A Person charged in any state with * * * Crime, who

shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.' Pursuant thereto, effectuating federal statutes have been adopted and what is now Chapter 759, Code of Iowa, 1954, I.C.A. entitled, Uniform Criminal Extradition Act, has been enacted. [Citations]

". . . With reference to extradition, section 759.16 provides that the prisoner, unless charged with an offense punishable by death or life imprisonment under the laws of the demanding state, may be admitted to bail by bond. However this section is applicable only while the person is being held to await requisition and before the warrant for his arrest is issued by the Governor. The chapter contains no similar provision for bail after the arrest upon such warrant. Hence it may be fairly inferred the omission of such provision was intentional." (Emphasis added.)

The Arizona Supreme Court in Waller v. Jordan, 118 P.2d 450, 452 (Ariz. 1941), a case analogous to the instant one, ruled:

"It will be noticed that if the county attorney on behalf of the state appeals, the court may admit the petitioner to bail pending the appeal. If, however, the petitioner appeals from the order refusing his discharge, the statute is silent as to his right to bail. We think when the legislature in one instance gives the right to bail pending the appeal but fails to give any right to bail in the other instance, it is equivalent to denying the right to bail in the latter case." See also 2 Sutherland, Statutory Construction § 4915 (3d ed. 1943).

Again, in State ex rel. Stringer v. Quigg, 107 So. 409, 411 (Fla. 1926), the court held:

"Authority for interstate rendition of fugitives by extradition emanates solely from the power delegated to the federal government by the Constitution of the United States . . . Legislation as to interstate rendition of fugitives being within the

power of Congress, the federal law upon that subject is paramount to state Constitution and statutes. [Citation omitted.] When the executive warrant of rendition has been issued, the fugitive is then held solely upon that authority. His detention is not for the purpose of trying him in the courts of this state, for he is charged with no offense against our laws, but he is apprehended and detained for the sole purpose of rendition to the demanding state."

Van Sickle argues that article 1, section 7, of the Nevada Constitution[6] is controlling in his case and that therefore he has a constitutional right to bail.[7] This argument has been well answered in State ex rel. Stringer, supra, 107 So. at 412, where the court ruled:

"This provision of the Constitution of Florida [a provision identical to Nevada's but for the immaterial substitution of the word "except" for "unless"], one of the greatest bulwarks of personal liberty, should not be narrowly or illiberally construed. On the other hand, it should not be enlarged beyond its plain sphere of operation. The quoted provision of our Declaration of Rights, except as to those persons expressly excluded by its terms, unquestionably affords the right to bail to all persons who are charged with or who may be convicted of crime under the laws of the state of Florida, but in the present state of the law we do not regard its provisions as applicable to one who is charged with an offense under the laws of another state, and who is before the courts of this state for the sole purpose of determining the lawfulness of his detention under an executive

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6. Nevada Const., art. 1, § 7:

"All persons shall be bailable by sufficient sureties; unless for Capital Offenses when the proof is evident, or the presumption great."

7. Even when a defendant is charged with a capital case in Nevada, the usual procedure is not to grant bail until after the preliminary hearing has been held and the magistrate has had an opportunity to review the evidence offered by the state to determine whether "the proof is evident, or the presumption great." The impracticability of such a review and determination by a Nevada magistrate when the case originates in and is prosecuted by a sister state is patently obvious.

warrant of extradition, under which latter process this state holds him for rendition to the demanding state, and for no other purpose. Extradition laws are enacted upon the presumption that the demanding state will accord the fugitive his right to bail, and all other legal rights. When a fugitive is held under executive warrant of extradition, it is entirely appropriate and just that his right to bail be tested by the laws of the demanding state, where he is charged with crime, and where his guilt or innocence must be judicially determined, and not by the laws of the asylum state which holds him solely for the purpose of rendition."

Likewise, in Waller v. Jordan, supra, the court held, 118 P.2d at 452:

"Appellant points to section 22, Article II of the state Constitution reading: 'All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great.' [Again, a provision identical to Nevada's but for the immaterial substitution of the word "except" for "unless."] and insists that it gives him the right to bail pending his appeal . . . It should be remembered that this provision and all others of our constitution relating to criminal proceedings have application only to those crimes over which the state authorities have jurisdiction by virtue of their having been committed in the state." (Emphasis added.)

The reason for the rule has been well expressed in Buchanan v. State ex rel. Weiss, 166 So.2d 596, 597 (Fla. App. 1964):

". . . One of the reasons supporting the rule against granting bail in extradition cases where the fugitive has been reduced to custody by the execution of a governor's rendition warrant, is because the offense is not one cognizable in the courts of the asylum state, whereas the demanding state has all of the facilities to determine the gravity of the offense, the amount of bail, if any, and the conditions thereof. Here there is no re-

straint on the respondent's leaving the jurisdiction. The integrity of the processes of the courts of Florida as well as the solemnity and dignity we should accord the request of a demanding sister state, places in jeopardy the ability of this state to produce the prisoner for delivery to the demanding state when the time arrives."

See also Ex parte Campbell, 23 N.W.2d 698 (Neb. 1946); Tomarchin v. Kelly, 118 So.2d 788 (Fla. App. 1960); Llerandi v. Blackburn, 97 So. 2d 247 (Fla. 1957); Ex parte Massee, 79 S.E. 97 (S.C. 1913); Annot., 56 A.L.R.2d 668 (1957).

We therefore vacate the order of the district judge admitting Van Sickle to bail as having been entered without jurisdiction.

Collins, C. J., and Batjer, J., concur.

THOMPSON, J., with whom ZENOFF, J., concurs, dissenting:

This original proceeding in certiorari tests the power of the district court to grant bail to a fugitive from justice charge with having committed a capital offense in a sister state.

By criminal complaint, the State of California has charged Jack Van Sickle with conspiracy to commit murder, a capital offense. A warrant for his arrest was issued. Van Sickle was apprehended in Nevada and committed to jail. In due course, the Governor of Nevada issued an executive warrant directing the Nevada authorities to deliver Van Sickle to California agents for conveyance to that state to stand trial upon the charge. In accordance with the command of the Uniform Criminal Extradition Act, Van Sickle was taken before the court and informed of his rights, especially of his right to challenge the legality of his arrest by habeas.[1] He did so and, in addi-

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1. NRS 179.197:

"1. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him has appointed to receive him unless he is first taken forthwith before a judge of a court of record of this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel.

"2. If the prisoner or his counsel state that he or they desire to test the

tion, petitioned for admission to bail. His petition for bail was granted and bail fixed in the sum of $10,000. Bail was furnished and Van Sickle released from confinement pending disposition of his challenge to the validity of his arrest. This certiorari proceeding was then commenced by the State since the remedy of appeal in these circumstances is not granted. Ex parte Wheeler, 81 Nev. 495, 500, 406 P.2d 713 (1965).

1. The State's challenge to the power of the district court to grant bail rests mainly upon NRS 179.207 and NRS 179.209[2] of the Uniform Criminal Extradition Act which allows bail before issuance of the executive warrant (unless the offense is one punishable by death or life imprisonment in the demanding state), but is silent as to the right to bail after the governor's warrant has been issued. This legislative silence is interpreted by the state to mean that bail is precluded in all extradition matters after issuance of the governor's warrant. This contention finds support in the case of Allen v. Wild, 86 N.W.2d 839,

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legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus.

"3. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody and to the agent of the demanding state."

2. NRS 179.207: "If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under NRS 179.189, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time, not exceeding 30 days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused gives bail as provided in NRS 179.209, or until he is legally discharged."

NRS 179.209: "Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state."

841-42 (Iowa 1957), where the court observed that since the act contained no similar provision for bail after arrest upon the governor's warrant, it may be inferred that the omission of such provision was intentional. Moreover, the State contends that the mentioned statutes preclude bail in all cases where the offense charged by the demanding state is punishable by death or life imprisonment.

2. The underlying fallacy of the State's position is the asumption that a legislative grant of power is essential before a court in this state may grant bail in an extradition matter. Our Nev. Const. art. 1, § 7, provides that "all persons shall be bailable by sufficient sureties; unless for Capital Offenses when the proof is evident or the presumption great." That provision does not exclude persons in custody by reason of an extradition proceeding. Application of Haney, 289 P.2d 945 (Idaho 1955). It is not confined to persons in custody for crimes committed in Nevada. Neither does it preclude bail to one charged with a capital offense where the proof is not evident nor the presumption great. Ex parte Wheeler, 81 Nev. 495, 406 P.2d 713 (1965). The court's power to grant bail stems from that constitutional provision and may not be diminished by legislative action or an interpretation of legislative silence. There is nothing contained in the U.S. Constitution art. IV, § 2, concerning interstate extradition which touches the problem before us.

3. Several statutes have been enacted to accommodate our constitutional provision for bail. NRS 34.360 provides that every person restrained of his liberty under "any pretense whatever" may petition for habeas. The "pretense" in this case was the warrant of the Governor of the State of Nevada. The Uniform Extradition Act itself, NRS 179.197, contemplates habeas to test the legality of his arrest. NRS 34.530 expressly makes habeas available for the purpose of giving bail to one in custody on "any" criminal charge. These provisions of our statutes accommodate the constitutional command.

Acceptance of the State's position that the court lacks power

to grant bail after the executive warrant has issued would deny meaning to these code provisions. Moreover, such position places a penalty upon the fugitive's right to challenge the legality of his arrest and might effectively force a waiver of that right since the price of exercising it — jail, until his challenge is resolved by the court — may be too great.

4. The offense with which Van Sickle is charged by the State of California is a capital offense under the law of that state. The California Constitution with respect to bail, art. 1, § 6, is identical to our art, 1, § 7. In California, as here, an accused in a capital case may not be admited to bail when the proof is evident or the presumption great. Conversely, he is entitled to release on bail where the proof is not evident nor the presumption thereof great. People v. Tinder, 19 Cal. 539 (1862). To this extent California law is the same as ours. Ex parte Wheeler, 81 Nev. 495, 406 P.2d 713 (1965). The determination of whether the proof is evident is discretionary [NRS 178.484(2); Ex parte Wheeler, supra, at 500] and not reviewable by certiorari [Marshall v. District Court, 79 Nev. 280, 382 P.2d 214 (1963)] since that writ concerns only jurisdiction. I would dismiss this proceeding.

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,

vs.

SECOND JUDICIAL DISTRICT COURT, STATE OF NEVADA, COUNTY OF WASHOE,
Respondent.

ORDER DENYING REHEARING

Good cause appearing,

IT IS ORDERED that rehearing be, and the same hereby is denied.

DATED: August 18, 1970.

Collins, C. J., Zenoff, Batjer, Mowbray, Thompson, J. J.

cc: Counsel of record

APPENDIX C

West's Ann. Cal. Penal Code, §182.1

"If two or more persons conspire:

"1. To commit any crime.

". . .

"They are punishable as follows:

"When they conspire to commit any crime against the person of any official specified in subdivision 6, they are guilty of a felony and are punishable by imprisonment in the state prison for not less than 10 years.

"When they conspire to commit any other felony, they shall be punishable in the same manner and to the same extent as is provided for the punishment of the said felony . . .'

West's Ann. Cal. Penal Code, §187:

"Murder is the unlawful killing of a human being, with malice aforethought."

West's Ann. Cal. Penal Code, §190:

"Every person guilty of murder in the first degree shall suffer death, or confinement in the state prison for life, at the discretion of the court or jury trying the same, and the matter of punishment shall be determined as provided in Section 190.1, and every person guilty of murder in the second degree is punishable by imprisonment in the state prison from five years to life."

Nevada Revised Statutes, §199.140:

"Every person convicted of a gross misdemeanor shall be punished by imprisonment in the county jail for not more than 1 year, or by a fine of not more than $1,000, or by both fine and imprisonment, unless the statute in force at the time of commission of such gross misdemeanor prescribed a different penalty."

Nevada Revised Statutes, §199.480:

"Whenever two or more persons shall conspire:

"1. To commit a crime;

* * *

every such person shall be guilty of a gross misdemeanor."

Nevada Revised Statutes, §179.209:

"Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state."

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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1970

No. 964

JACK VAN SICKLE, *Petitioner*,

v.

THE STATE OF NEVADA, *Respondent*.

On Petition for Writ of Certiorari to the Supreme Court of the State of Nevada.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1970

No. 964

JACK VAN SICKLE, *Petitioner,*

v.

THE STATE OF NEVADA, *Respondent.*

On Petition for Writ of Certiorari to the Supreme Court of the State of Nevada.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioner seeks review by certiorari of an order of the Supreme Court of the State of Nevada revoking petitioner's bail pending his habeas corpus hearing on the validity of the executive warrant issued against the petitioner by the Governor of Nevada.

OPINION BELOW

The opinion of the Supreme Court of the State of Nevada (Appendix A, page 17 of Petition) is reported at 471 P.2d 224.

An order denying petitioner's motion for rehearing was entered by the Supreme Court of the State of Nevada on August 18, 1970 (Appendix B, page 28 of the Petition).

JURISDICTION

Petitioner has invoked the jurisdiction of this court under the provisions of 28 USC, § 1257(3), and Rule 19, ¶1a of the Rules of this court. Respondent contends that there is no showing in the petition that any statute of the State of Nevada is repugnant to the Constitution or the laws of the United States.

QUESTIONS PRESENTED

1. Does the Eighth Amendment to the United States Constitution in any way require bail in every custodial situation?

2. Does the Fourteenth Amendment to the United States Constitution in any way require bail in every custodial situation?

STATEMENT OF THE CASE

Petitioner seeks to invoke the jurisdiction of this court to review by certiorari an order of the Supreme Court of the State of Nevada. The effect of this order was to revoke petitioner's bail pending his habeas corpus hearing on the validity of the executive warrant issued against the petitioner by the Governor of Nevada. The extradition proceedings were brought by the State of California on a criminal complaint charging conspiracy to commit the murder of seven persons, including petitioner's wife, a Superior Court judge, and various attorneys. Conspiracy to commit murder is a capital offense in the State of California.[1]

Petitioner was admitted to bail by order of the District Court of the State of Nevada on March 31, 1970. The Attorney General petitioned the Supreme Court of the State of Nevada for a

[1]West's Annotated California Penal Code, §§ 182.1 and 190.

writ of certiorari for a review of the order admitting petitioner to bail, in that the order exceeded the District Court's jurisdiction. The Supreme Court of Nevada granted certiorari and vacated the order admitting petitioner to bail, holding that the order was in excess of the jurisdiction of the District Court.

ARGUMENT

No Substantial Federal Question Exists in This Case. The Right to Bail Is Not and Never Has Been Coextensive With Custody.

I.

PETITIONER HAS FAILED TO ESTABLISH THAT A FEDERAL QUESTION EXISTS IN LIGHT OF THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Neither the Eighth Amendment nor the Fourteenth Amendment to the United States Constitution requires that every person charged with a state offense be given his liberty on bail pending trial. In *U.S. ex rel. Fink v. Heyd*, 287 F.Supp. 716, *affirmed* 408 F.2d 7, *cert. denied*, 396 U.S. 895, the court held that while the right to bail is a fundamental right, it is not an absolute right. States may constitutionally provide by statute that bail may be granted in some cases and not in others. The court cited *Mastrion v. Hedman*, 328 F.2d 708, *cert. denied*, 376 U.S. 965:

> Neither the Eighth Amendment nor the Fourteenth Amendment requires that everyone charged with a state offense must be given his liberty on bail pending trial. While it is inherent in our American concept of liberty that a right to bail shall generally exist, this has never been held to mean that a state must make every criminal offense subject to such a right or that the right provided as to offenses made subject to bail must be so administered that every accused will always be able to secure his liberty pending trial. Traditionally and

> acceptedly, there are offenses of a nature as to which a state properly may refuse to make provision for a right to bail.

In this regard, see also *Wansley v. Wilkerson*, 283 F.Supp. 54.

This court, in *Carlson v. Landon*, 342 U.S. 524, in considering a statutory provision authorizing the Attorney General to hold without bail alien communists under deportation charges, held that the Eighth Amendment did not confer a right to bail in every criminal prosecution. This court also noted at that time that it was within Congressional competence to define those classes of cases in which bail should be allowed.

In *U.S. ex rel. Covington v. Coparo*, 297 F.Supp. 203, the court noted that, although this court had not passed directly upon whether Congress and the Legislatures are free to define the classes of crimes which are bailable as a matter of right and those which are not, all federal courts which have passed on this question have recognized that a state may constitutionally provide that bail be granted in some cases as a matter of right, and denied in others. *U.S. ex rel. Hyde v. McMann*, 263 F.2d 940, *cert. denied, U.S. ex rel. Hyde v. LaVallee*, 360 U.S. 937.

In *Coparo*, supra, the court also noted that state legislatures may define types of crimes so that bail is not mandatory in all cases, and that a court's refusal of bail in appropriate cases does not trespass on federal constitutional rights under the Eighth or Fourteenth Amendments.

In *Steigler v. Superior Court*, Del.Supr., 252 A.2d 300, *cert. denied*, 395 U.S. 940, 396 U.S. 880, the Supreme Court of Delaware upheld the Delaware Constitution's exception for capital offenses to the general rule that all prisoners are bailable. The defendant's claim that to hold him without bail violated his rights under the Eighth and Fourteenth Amendments was described by the court as untenable. The court upheld classifications for bail eligibility.

If classes of eligibility for bail do in fact exist, then the Legislature of the State of Nevada has the right to define those classes. In the exercise of the obligation imposed on the State of Nevada by Article IV, Section 2, paragraph 2 of the United States Constitution, the State of Nevada may reasonably define types of custody to which bail does not apply, without offending the Eighth Amendment to the Constitution of the United States. In adopting the Uniform Criminal Extradition Act, it has done so.

II.

PETITIONER HAS FAILED TO ESTABLISH THAT A FEDERAL QUESTION EXISTS IN LIGHT OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The order of the Nevada Supreme Court is neither arbitrary nor discriminatory. Petitioner's Fourth Amendment right to test his extradition has not been interfered with. No rights flowing to petitioner through *Kirkland v. Preston*, 385 F.2d 670, are affected by the order. Petitioner is validly within a class denied bail as a matter of right by the Legislature of the State of Nevada. The class is not an arbitrary one. There is no substantial federal question, nor for that matter is there any federal question, that arises in this action under the Fourteenth Amendment to the United States Constitution.

Any conflict that appears in the various cases cited by petitioner are caused merely by various non-discriminatory statutory definitions of classes entitled to bail in the various states.

CONCLUSION

The petition for writ of certiorari should be denied. Petitioner has failed to show that a substantial federal question exists. No

rights under the Constitution of the United States have been denied petitioner.

DATED this 4th day of December, 1970.

HARVEY DICKERSON
Attorney General of Nevada

By ROBERT A. GROVES
Deputy Attorney General
Attorney for Respondent

SPO, Carson City, Nevada, 1970

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1970

No. 964

JACK VAN SICKLE,
Petitioner,

v.

THE STATE OF NEVADA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

PETITIONER'S REPLY BRIEF

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1970

No. 984

JACK VAN SICKLE,
Petitioner,

v.

THE STATE OF NEVADA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NEVADA

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INDEX

Page

POINT ONE: STATUTORY SILENCE IS NOT STATUTORY CLASSIFICATION 1

POINT TWO: THE RIGHT OF BAIL, AND THE POWER TO ADMIT TO BAIL, ARE NECESSARY COMPONENTS OF AN UNHAMPERED, INDEPENDENT JUDICIAL DETERMINATION ON PROBABLE CAUSE IN EXTRADITION..... 3

CITATION OF AUTHORITIES

Page

United States Constitution

Amendment VIII 2

Amendment XIV 2

Constitution of the State of Nevada

Article I, §7 2

Nevada Revised Statutes

§179.197 4

Cases

Artukovic v Boyle (D.C., Cal., 1952) 107 F.Supp. 11; rev'd on other grounds; (CA 9th) 211 F.2d 565; cert den.: 348 U.S. 818, 99 L.Ed. 698 75 S.Ct. 202 6

In re Kaine (1852) 55 U.S. 103, 14 How. 103, 14 L.Ed. 345 4

Kirkland v Preston (C.A., Dist.Col., 1967) 385 F.2d 670 4

Sayre v Shipley (C.A., 5th, 1969) 418 F. 2d 679 4

Trimble v Stone (D.C. Dist.Col., 1960) 187 F.Supp. 483 2

Wright v Henkel (1903) 190 U.S. 40, 23 S.Ct. 781, 47 L.Ed. 948 6

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1970
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On Petition for Writ of Certiorari to
The Supreme Court of the State of Nevada

PETITIONER'S REPLY BRIEF

The petitioner, JACK VAN SICKLE, without waiving or modifying in any way his reliance on all matters contained in his Petition for Certiorari, hereby replies to arguments first raised in the Attorney General's opposing brief:

POINT ONE: STATUTORY SILENCE IS NOT STATUTORY CLASSIFICATION

Instead of focusing on the issues raised by the facts in this case, the Attorney General crosses his eyes and points finally at the general proposition that legislative bodies are empowered to make reasonable classifications of bailable offenses. This will not do. The Legislature of the State of Nevada has never classified persons held under executive warrants of extradition as being disentitled to invoke Nevada's constitutional and statu-

tory provisions on bail. All the shouting, so to speak, is because petitioner is entitled to bail under the Eighth and Fourteenth Amendments of the United States Constitution, under Article 1, §7, of the Nevada Constitution, under applicable Nevada statutory provisions on bail and habeas corpus, and under the evidentiary determination of the trial court in habeas corpus proceedings admitting petitioner to bail; but, petitioner has been deprived of the equal protection of these constitutional provisions and laws by the judicial determination of a majority of the justices of the Nevada Supreme Court that the courts of Nevada have no power to admit to bail any person held under an executive warrant of extradition.

There is no merit to the Attorney General's contention that legislative silence constitutes a denial of a right to bail. The same argument was raised in TRIMBLE v STONE, U.S., D.C., Dist.Col., 1960, 187 F.Supp. 483. There it was contended a juvenile could not be enlarged on bail pending trial because the Juvenile Court Act for the District of Columbia made no provision therefor. Judge Holtzoff's opinion in that case, upholding the right of bail, states:

> "It is argued in opposition to the petition that there is no provision for bail in the Juvenile Court Act for the District of Columbia, and that the pertinent statute * * * authorizes the Court either to release the juvenile in the custody of a parent, guardian, custodian or probation officer; or else to cause him to be detained in such place of detention as shall be provided by the Bureau of Public Welfare. True, the Juvenile Court Act is silent on the subject of bail. The higher law of the Constitution, however, prevails. The Eighth Amendment is self-executing and no statute is necessary to implement it. It should be noted that there is no provision in the statute denying the right to bail. The Act is merely silent on this subject. A serious Constitutional question would arise if the statute expressly or by necessary implication denied the right

to bail.

"It is clear, therefore, that this issue cannot be determined by a construction of the Juvenile Court Act. The problem must be solved solely on the basis of the Constitution, namely, whether the constitutional right to bail applies in this instance. If it does, this privilege must be accorded to this petitioner. * * * "

The court in *Trimble v Stone*, supra, also noted the fact that juvenile proceedings were denominated "civil" rather than "criminal," but this artificiality was disposed of by the recognition that "basic human rights do not depend on nomenclature." In holding that the juvenile had a constitutional right to bail, Judge Holtzoff stated:

"The Court recognizes that it may be desirable in the interest of the public, or even in the interest of the individual, in some instances to confine the accused while awaiting final disposition of his case, instead of permitting him to be liberated on bail. These considerations are as applicable to some adult offenders as to juveniles. Yet the Constitution forbids this result. It is far more important to preserve the basic safeguards of the Bill of Rights, which were developed as a result of centuries of experience, than it is to sacrifice any one of them in order to achieve a desirable result in an individual case no matter how beneficial it may seem to be for the moment. Immediate myopic vision must not be permitted to interfere with a long range view of the protection of personal liberty."

POINT TWO: THE RIGHT OF BAIL, AND THE POWER TO ADMIT TO BAIL, ARE NECESSARY COMPONENTS OF AN UNHAMPERED, INDEPENDENT JUDICIAL DETERMINATION ON PROBABLE CAUSE IN EXTRADITION

The argument, implicit in the comments of the Attorney General's opposing brief, that the people get their rights from

government is as old and as wrong as the history of the abuse of power.

This nation was founded on the proposition that the government gets its power from the people; to make assurance doubly sure, the Bill of Rights guarantees that certain rights of the people, including the right of bail, shall be free from abuse by the government.

The central, vital necessity of an independent judiciary to compel obedience to the Bill of Rights is manifest in extradition cases. Thus, the right to an independent judicial review of probable cause is commanded by the Fourth Amendment of the United States Constitution, KIRKLAND v PRESTON (C.A., Dist.Col., 1967) 385 F.2d 670, SAYNE v SHIPLEY (C.A. 9th, 1969) 418 F. 2d 679, and incorporated in the Uniform Criminal Extradition Act, Nevada Revised Statutes, §179.197.

The importance of this right is documented in IN RE KAINE (1852) 55 U.S. 103, 14 How. 103, 14 L.Ed. 345, where the Court considered our extradition treaty with Great Britain and the Act of 1848 whereby Congress referred foreign powers to the judiciary for extradition warrants and commitments. The opinion by Justice Catron recites the history of Johnathan Robbins:

In 1799, Robbins was arrested as a fugitive for murder in the British fleet. He was imprisoned under a warrant of the District Judge of South Carolina and had been confined six months when the Secretary of State addressed a letter to the Judge mentioning that application had been made by the British Minister to the President for the delivery of Robbins under Jay's Treaty. The letter said: "The president advises and requests you to deliver him up." On this authority, Robbins was brought before the District Court on habeas corpus and the judge ordered his surrender to the British consul or his agent.

Robbins was delivered to a detachment of federal troops stationed there to aid in the surrender and they delivered him to an officer of the British navy waiting to receive Robbins on a vessel of war, in which he was carried away. There was never any dispute that the judge acted by order of the President, in aid of the executive department. The act of the executive was defended on the ground that Jay's Treaty was a compact between nations which must be executed by the President throughout, at least until Congress gave the courts or judges power to act in the matter. A resolution impeaching the President's conduct was brought in the House of Representatives, where the President was defended by John Marshall, later Chief Justice of the United States Supreme Court. The people, however, opposed the doctrine of single action by the President. The opinion in *In re Kaine*, supra, states:

> "* * * But a great majority of the people of this country were opposed to the doctrine that the President could arrest, imprison and surrender a fugitive, and thereby execute the Treaty himself; and they were still more opposed to an assumption that he could order the courts of justice to execute his mandate, as this would destroy the independence of the judiciary, in cases of extradition, and which example might be made a precedent for similar invasions in other cases; and from that day to this, the judicial power has acted in cases of extradition, and all others, independent of executive control."

The effect of this popular opposition on the Treaty of 1842 with Great Britain, and Congress' Act of 1848 whereby a judicial determination is interposed between the acts of executives in extradition, is described in *In re Kaine*, supra, as follows:

> "That the eventful history of Robbins' case had a controlling influence on our distinguished negotiator, when the Treaty of 1842 was made; and especially on Con-

gress, when it passed the Act of 1848, is, as I suppose, free from doubt. The assumption of power to arrest, imprison, and extrude, on executive warrants, and the employment of a judicial magistrate to act in obedience to the President's commands, where no independence existed or could exist, had most materially aided to overthrow the administration of a distinguished revolutionary patriot, whose honesty of purpose no fairminded man at this day doubts. Public opinion had settled down to a firm resolve, long before the Treaty of 1842 was made, that so dangerous an engine of oppression as secret proceedings before the executive, and the issuing of secret warrants of arrest, founded on them, and long imprisonments inflicted under such warrants, and then, an extradition without an unbiassed hearing before an independent judiciary, were highly dangerous to liberty, and ought never to be allowed in this country. Congress obviously proceeded on this public opinion when the Act of 1848 was passed, and therefore referred foreign powers to the judiciary when seeking to obtain the warrant, and secure the commitment of the fugitive; and which judicial proceeding was intended to be independent of executive control, and in advance of executive action on the case. * * * "

The complete and independent exercise of judicial power in habeas corpus encompasses the right to maintain judicial custody over the person of a petitioner in habeas corpus, and to admit him to bail. WRIGHT v HENKEL (1903) 190 U.S. 40, 23 Sup.Ct. 781, 47 L.Ed. 948; ARTUKOVIC v BOYLE (D.C., Cal., 1952) 107 F.Supp. 11, rev'd on other grounds (CA 9th) 211 F.2d 565, cert den. 348 U.S. 818, 99 L.Ed. 698, 75 S.Ct. 202.

This right was exercised in this case by the order of the trial judge admitting the petitioner to bail. This right, and the equal protection of the laws, have been denied petitioner by the act of the majority of the justices of the Nevada Supreme Court, and certiorari should be granted to vindicate that right and reinstate the order admitting petitioner to bail.

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PETITION

FOR

REHEARING

IN THE

SUPREME COURT OF THE UNITED STATES

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No. 964

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THE STATE OF NEVADA,
Respondent.

PETITION FOR REHEARING

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INDEX AND TABLE OF AUTHORITIES

	Page
The denial of certiorari overlooks a situation of compelling emergency and national magnitude in interstate extradition	1
Federal court conflict	1
National incidence of interstate extradition	2
Responsibility of United States Supreme Court	3
Abuse of power of extradition	6
Summary and conclusion	7
Appendix A	10
Appendix B	12
Appendix C	13

Brown v Fogel (CA4th, 1967) 387 F2d 692, certiorari denied, 490 US 1045, 88 SCt 1647, 20 LEd2d 307	1
Ex parte Kentucky v Dennison (1860) 24 How. 66, 16 LEd 717	4
People ex rel. Bowman v Woods (Ill. Supreme Ct, 1970) 264 NE2d 151	6
People of the State of New York v O'Neill (1959) 349 US 564, 79 SCt 564, 3 LED2d 585	4
Sibron v State of New York (1968) 392 US 40, 88 SCt 1889, 20 LEd2d 917	6
Walden v Mosley (DC ND Miss, 1970) 312 FSupp 855	2

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THE DENIAL OF CERTIORARI OVERLOOKS A SITUATION OF COMPELLING EMERGENCY AND NATIONAL MAGNITUDE IN INTERSTATE EXTRADITION.

Since the consideration of the original petition for certiorari herein, Petitioner's counsel have discovered a source of statistics dealing with the national impact of interstate extradition, and have further discovered a federal-court conflict on the question of admission to bail in extradition cases.

Due consideration of these data and additional authorities shows that a problem of national magnitude is *at this moment* on the doorstep of the federal courts, where there is already a sharp conflict of opinion on the right of admission to bail for persons in petitioner's situation.

FEDERAL COURT CONFLICT

BROWN v FOGEL, CA 4th, 1967, 387 F2d 692, *certiorari denied*, 490 U.S. 1045, 88 SCt 1647, 20LEd2d 307, approved

the action of the United States District Court for the Eastern District of Virginia in admitting the petitioner to bail on his own recognizance pending a proceeding in the state courts of Virginia testing the validity, in habeas corpus, of an executive warrant by the Governor of Virginia commanding petitioner's rendition to stand charges in the State of Maryland, and upholding the condition of that bail that petitioner remain in the general custody of his attorney in New York except for necessary absences connected with litigation against petitioner.

On the other hand, a person in exactly the same situation in Mississippi, but whose habeas corpus challenge to the extradition warrant was itself pending in federal court, was denied bail during the pendency of the proceeding in WALDEN v MOSLEY, N.D., Miss, DC, 312 FSupp 855, decided on May 1, 1970.

The contrariety of opinion in these federal court decisions is not attributable to statutory provisions. Virginia adopted the Uniform Criminal Extradition Act by Laws, 1940, ch. 305; Code 1950, §§ 19.1-49 to 19.1-80, which is silent on the question. Mississippi's provision on extradition (Miss. Code, 1942 Ann., §3981) is also silent on the matter. Attached hereto as Appendix A is a table of the jurisdictions in which the uniform legislation has been adopted, including 46 states and 2 territories. (The only states which have not adopted the uniform law are: Mississippi; North Dakota; South Carolina; and Washington.)

NATIONAL INCIDENCE OF INTERSTATE EXTRADITION

During the year 1969, Miss Marilyn Pochop, the Extradition Secretary to the Governor of the State of Nevada, polled the several States to determine the number of demands made and received in interstate extradition for the year 1968. Her compilation of figures is attached hereto as Appendix B.

Examination of this compilation reveals the following:

1. Thirteen states did not respond to the poll.

2. Thirty-seven states reported a total of 5,198 demands for extradition made in 1968.

3. Thirty-seven states reported receiving in 1968 a total number of 4,488 requests for extradition made upon those states as asylum states.

4. Each of the reporting states, during the year 1968, made an average number of demands for extradition upon other states in the sum of 140.48.

5. If this average number of demands for extradition is applied to the 13 non-responding states, then a total projected figure of 7,024 is obtained for all extradition demands made by 50 states in just one year, 1968.

Miss Pochop further reports by a letter attached hereto as Appendix B annual increases in the incidence of extradition usage in Nevada as follows:

STATE OF NEVADA	DEMANDING	ASYLUM
1968	190	250
1969	231	275
1970	211	285

Undoubtedly, the increases shown for Nevada in the years 1969 and 1970 and would be paralleled by increases in all other states for those periods and for 1971.

RESPONSIBILITY OF THE UNITED STATES SUPREME COURT

Surely, this study establishes that we are talking about a matter affecting thousands and thousands of people in this country every year.

Surely, also, we are talking about a matter the determination of which is the direct responsibility of this court.

As early as the decision in EX PARTE KENTUCKY v DENNISON (1860) 24 How. 66, 16 LEd 717 (opinion by Chief Justice Taney) it was held the Extradition Clause was so important to the federal system of government that basic issues thereunder could not be left to be determined according to the attitude and interpretation of the several states, but that the clause must have a plain and definite construction, lest the clause serve as a constant source of controversy and irritating discussion between the states.

As late as the decision in PEOPLE OF THE STATE OF NEW YORK v O'NEILL (1959), 349 US 564, 79 SCt 564, 3 LEd2d 585, certiorari was granted to review the decision of the Supreme Court of Florida (100 So.2d 149) that the "Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings" violated the United States Constitution. In delivering the opinion for the Court, Mr. Justice Frankfurter states:

> ". . . We granted certiorari . . . (omitting citation) inasmuch as this holding brings into question the constitutionality of a statute now in force in forty-two States and the Commonwealth of Puerto Rico. . . "

It cannot seriously be considered that the impact of uniform legislation on interstate rendition of witnesses in criminal proceedings has anything approaching the impact of interstate rendition of fugitives. How is it, then, that the Court has reviewed constitutional issues under uniform legislation which, at best, affects only a handful of people a year, and yet today refuses to review direct constitutional issues arising under legislation affecting thousands and thousands of people in this country every year?

Before leaving the case of PEOPLE OF THE STATE OF NEW YORK v O'NEILL, supra, it should also be noted that one of the grounds of challenge to the "Uniform Law to Secure the Attendance of Witnesses from Within or Without a

State in Criminal Proceedings" was that the act violated the Due Process Clause by failing to make any provision for bail. This Court stated as to that issue:

> " . . . The Circuit Court of Dade County ruled that the absence of any provision for bail in the procedure of apprehension and delivery violated due process of law. Since the Supreme Court of Florida expressly refrained from ruling whether the failure of the statute to provide for bail for persons attached and delivered violated either the Florida Constitution, F.S.A.Const. Declaration of Rights, §9, or the Fourteenth Amendment, and *since silence on bail is not tantamount to proscription of bail, the claim that this silence of the statute is a violation of the Fourteenth Amendment is a hypothetical question* which need not now be considered. We may add that the sole claim before us, as it was the sole claim dealt with by the Supreme Court of Florida, is that the statute is unconstitutional on its face. No claim is before us that the administration of the statute in the particular circumstances of this case violates due process." (Emphasis supplied)

In the instant case, the question which was hypothetical in PEOPLE OF THE STATE OF NEW YORK v O'NEILL, supra, is now real — that the decision of the Supreme Court of the State of Nevada construing the "Uniform Criminal Extradition Act" deprived petitioner of his constitutional right of bail. The question is squarely presented by the present petition; the question is one of magnitude under the federal Constitution and national impact in the federal courts as well as the courts of the several states. The question cries out for resolution by this Court.

If the question be not resolved by this Court, what will be the effect on Petitioner? He has again been incarcerated in the jail of Washoe County, Nevada, where he must fight out

the issues of probable cause without the benefit of bail which is available to all others before conviction. During this time he could apply to the United States District Court for the District of Nevada for admission to bail (as was done in BROWN v FOGEL, supra). If bail be denied there (as it might well be in deference to the decision of the Supreme Court of the State of Nevada), then petitioner may again be confronted with the necessity of running the gamut of courts to preserve the issue of bail and obtain definitive resolution of the question. Petitioner is a responsible and reliable man in his community and his state, but the abilities and resources of any man may be so strained by incarceration that he will be coerced to forego his constitutional rights. The petitioner has now entered the "low visibility" zone of criminal process where this Court should act, as it did in SIBRON v STATE OF NEW YORK (1968) 392 US 40, 88 SCt 1889, 20 LEd2d 917, stating:

> "Many deep and abiding constitutional problems are encountered primarily at a level of 'low visibility' in the criminal process — in the context of prosecutions for 'minor' offenses which carry only short sentences. We do not believe that the Constitution contemplates that people deprived of constitutional rights at this level should be left utterly remediless and defenseless against representations of unconstitutional conduct. A State may not cut off federal review of whole classes of such cases by the simple expedient of a blanket denial of bail pending appeal. . . . "

ABUSE OF POWER OF EXTRADITION

All instruments of power, however much they may be intended to be used for the promotion of humanity, can, nevertheless, be misued as instruments of oppression. The instrument of interstate extradition is no exception, particularly where use of the instrument is coupled with an absence of bail. This was most recently illustrated in the case of PEOPLE EX REL. BOWMAN v WOODS (Ill. Supreme Court, 1970)

264 NE2d 151. Thomas Bowman plead guilty to complaints of cow stealing in Alabama (ten cows of different ownership were involved in a single transaction). In 1951 Bowman was sentenced to imprisonment of a year and a day for each separate offense. He began serving his sentence on May 5, 1951, and a little over a year later, on August 28, 1952, Bowman escaped from a prison farm and fled to Illinois. In 1955, Bowman was arrested on a gambling charge in Illinois and it was learned he was wanted in Alabama as an escapee. A fugitive warrant was issued and Bowman was retained in custody. Hearings on the fugitive complaint were continued five times on motion of the State. Alabama had been duly notified to begin extradition proceedings but informed the State's Attorney in Illinois that Alabama had no desire for Bowman's return; so, on August 12, 1955, on motion of the State of Illinois, the fugitive complaint was nol-prossed and Bowman was released. Then, in March 1957, over a year and a half later, Bowman was again arrested under a warrant issued by the Governor of Illinois at the request of the Governor of Alabama. Bowman started habeas corpus proceedings because of inaction on the part of Alabama and when Alabama failed to take further action to facilitate extradition, Bowman was discharged from custody some three months later on June 18, 1957. Then, after a lapse of eleven years, in May 1968, Bowman was arrested a third time under warrant of the Governor of Illinois made at the request of the Alabama Governor. Bowman again filed a petition for a writ of habeas corpus which was denied by the lower court in Illinois, but granted by the Illinois Supreme Court. The court stated:

> "In this case there was an unexplained 13-year delay between the first extradition proceeding in 1955 and the last effort in 1968. During this period the State of Alabama knew of Bowman's presence in Illinois and twice refused to extradite him. *As a consequence, because he has been unable to make bail, petitioner has been imprisoned*

in Illinois on three occasions pending disposition of the extradition proceeding. We believe that the circumstances of this case require an application of the concept of fundamental fairness, as expressed in many appeals. . . . " (Emphasis supplied.)

SUMMARY AND CONCLUSION

Petitioner, and many thousands of others similarly situated annually, are being denied their constitutional rights of bail, the equal protection of the laws and due process of law under a heterodoxy of state and lower federal court opinion as to the requirements of the Extradition Clause and the power of the judiciary in habeas corpus.

These constitutional issues arise in the field of interstate extradition — a field classically considered to be basic to orderly federal criminal administration.

Certiorari has readily been granted by this Court to review constitutional issues arising under the "Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings" — an area of miniscule national impact in comparison with the impact of the "Uniform Criminal Extradition Act."

Refusal to grant certiorari relegates petitioner and all others desiring to challenge the validity of extradition by habeas corpus to the coercion of imprisonment under a rule of geography instead of a rule of justice under constitutional law.

The Court is hereby called upon to exercise its highest duty as the guardian of constitutional rights, and also its more immediate and perhaps humbler task as a conscientious housekeeper over federal criminal administration.

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UNIFORM CRIMINAL EXTRADITION ACTS
STATES OF ADOPTION

Alabama	Code of Ala., Tit. 15, §§ 48-67, 69-74.
Alaska	AS 12.70.010 to 12.70.290.
Arizona	A.R.S. §§ 13-1301 to 13-1328.
Arkansas	Ark. Stats. §§ 43-3001 to 43-3028.
California	West's Ann.Pen.Code, §§ 1548 to 1556.2.
Colorado	C.R.S. '53 60-1-1 to 60-1-29, 60-2-1 60-2-5.
Connecticut	C.G.S.A. §§ 54-157 to 54-185.
Delaware	11 Del.C. §§ 2501 to 2530.
Florida	F.S.A. §§ 941.01 to 941.30.
Georgia	Code, §§ 44-401 to 44-429.
Hawaii	R.L.H.1955, §§ 250-1 to 250-27.
Idaho	I.C. §§ 19-4501 to 19-4527.
Illinois	S.H.A. ch. 60, §§ 18-49.
Indiana	Burns' Ann.St. §§ 9-419 to 9-448.
Iowa	I.C.A. §§ 759.1 to 759.29.
Kansas	KSA 62-727 to 62-757.
Kentucky	KRS 440.150 to 440.420.
Louisiana	Code Crim.Pro., arts. 261 to 280.
Maine	15 M.R.S.A. § 201 et seq.
Maryland	Code 1957, art. 41, §§ 16-43.
Massachusetts	M.G.L.A., c. 276 § 11-20R.
Michigan	M.C.L.A. §§ 780.1-780.31.
Minnesota	M.S.A. §§ 629.01 to 629.29.

Missouri	V.A.M.A. §§ 548.011 to 548.300.
Montana	R.C.M.1947, §§ 94-501-1 to 94-501-32.
Nebraska	R.R.S.1943, §§ 29-729 to 29-758.
Nevada	N.R.S. §§ 179.177 to 179.235.
New Hampshire	RSA 612:1 to 612:30.
New Jersey	N.J.S.A. 2A:160-6 to 2A:160-35.
New Mexico	1953 Comp. §§ 41-19-1 to 41-19-30.
New York	McKinney's Crim.Code, §§ 827 to 859.
North Carolina	G.S. §§ 15-55 to 15-84.
Ohio	R.C. §§ 2963.01 to 2963.29.
Oklahoma	22 Okl.St.Ann. §§ 1141.1 to 1141.30.
Oregon	ORS 147.010 to 147.280.
Panama Canal Zone	6 C.Z.C. §§ 5021 to 5050.
Pennsylvania	19 P.S. §§ 191.1 to 191.31.
Rhode Island	Gen.Laws 1956, §§ 12-9-1 to 12-9-35
South Dakota	SDC 34.1701 et seq.
Tennessee	T.C.A. §§ 40-1001 to 40-1034.
Texas	Vernon's Ann.C.C.P. art. 51.13.
Utah	U.C.A.1953, 77-56-1 to 77-56-28.
Vermont	13 V.S.A. §§ 4941 to 4969.
Virgin Islands	5 V.I.C. §§ 3801 to 3829.
Virginia	Code 1950, 19.1-49 to 19.1-80.
West Virginia	Code, §§ 5-1-7 to 5-1-13.
Wisconsin	W.S.A. 964.01 to 964.29.
Wyoming	W.S.1957, §§ 7-27 to 7-53.

Appendix A

STATE	DEMANDING	ASYLUM
ALABAMA	No Response	
ALASKA	No Response	
ARIZONA	145	150
ARKANSAS	No Response	
CALIFORNIA	800	400
COLORADO	No Response	
CONNECTICUT	No Response	
DELAWARE	No Response	
FLORIDA	250	250
GEORGIA	140	185
HAWAII	2	58
IDAHO	100	50
ILLINOIS	225	200
INDIANA	100	100
IOWA	58	39
KANSAS	232	145
KENTUCKY	140	110
LOUISIANA	No Response	
MAINE	18	8
MARYLAND	160	175
MASSACHUSETTS	20	100
MICHIGAN	190	200
MINNESOTA	40	60
MISSISSIPPI	No Response	
MISSOURI	200	200
MONTANA	70	30
NEBRASKA	50	30

Appendix B

STATE	DEMANDING	ASYLUM
NEVADA	190	250
NEW HAMPSHIRE	25	13
NEW JERSEY	No Response	
NEW MEXICO	75	50
NEW YORK	100	250
NORTH CAROLINA	200	100
NORTH DAKOTA	20	12
OHIO	No Response	
OKLAHOMA	120	130
OREGON	200	140
PENNSYLVANIA	No Response	
RHODE ISLAND	20	130
SOUTH CAROLINA	No Response	
SOUTH DAKOTA	35	15
TENNESSEE	350	150
TEXAS	403	429
UTAH	45	55
VERMONT	No Response	
VIRGINIA	165	26
WASHINGTON	110	120
WEST VIRGINIA	100	100
WISCONSIN	85	18
WYOMING	15	10
TOTAL	5,198	4,488

Appendix B

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
SUPREME COURT BUILDING
CARSON CITY, NEVADA 89701

ROBERT LIST
ATTORNEY GENERAL

March 5, 1971

Harry Claiborne, Esq.
Attorney at Law
108 S. Third
Las Vegas, Nevada 89101

Dear Mr. Claiborne:

Sorry I was unable to get these figures out to you yesterday, but I was unable to get to the project before this morning.

Records show for 1969, Nevada requested 231 extraditions from other states and received 275 requests from other states. In 1970, Nevada requested 211, and received requests from 285 states.

I hope this is the information you need.

Sincerely,

Marilyn Pochop
Extradition Secretary

Appendix C